

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD J. DRAKULICH,

Defendant.

No. 02-CR-30061-DRH

ORDER

HERNDON, Chief Judge:

This matter comes before the Court on Defendant Drakulich's motion to toll the statute of limitations for filing a habeas corpus motion to vacate pursuant to **28 U.S.C. § 2255**. (Doc. 141.) Defendant's motion informs the Court that Defendant intends to file a **Section 2255** motion, but that he is awaiting information pursuant to a **Freedom of Information Act ("FOIA")** request that he made on May 30, 2008. Applications for a writ of habeas corpus are subject to a 1-year period of limitation. **28 U.S.C. § 2255(f)** provides, in relevant part, that:

The limitation period shall run from the latest of--

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

28 U.S.C. § 2255(f).

Defendant Drakulich argues that because the Government has yet to

provide the information he requested pursuant to his FOIA request that this Court should toll the **Section 2255** statute of limitations. **5 U.S.C. § 552** provides that agencies receiving a FOIA request must “determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor. . . .” Defendant’s FOIA request is dated May 30, 2008. Defendant’s limitations period was set to expire on June 29, 2008. The Court requires more information prior to making a ruling on this motion. Specifically, the Court **DIRECTS** the United States to respond to Defendant’s motion and to include an explanation as to why the information was not previously turned over, why Defendant had to file a FOIA request, and the status of the FOIA request. In turn, the Court **DIRECTS** Defendant to file a supplemental brief explaining why he waited until May 30, 2008 to file a FOIA request and why the requested materials are essential to his **Section 2255** motion. Both briefs shall be filed no later than **August 29, 2008**.

IT IS SO ORDERED.

Signed this 30th day of July, 2008.

/s/ David R. Herndon
Chief Judge
United States District Court